FILE COPY

No. 734

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA

v.

COMMERCIAL CREDIT COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Specification of error	4
Argument	4
Conclusion	9
Appendix	10–13

CITATIONS

Cases:	
Callahan v. *United States*, No. 576, decided April 11, 1932	9
General Motors Acceptance Corporation v. *United States*, No. 574, present term	2, 4
United States v. *Cahill*, 13 F. (2d) 83	7
Statutes:	
Revised Statutes:	
Sec. 3061 (U. S. C. Title 19, sec. 482)	10
Sec. 3062 (U. S. C. Title 19, sec. 483)	10
National Prohibition Act, c. 85, 41 Stat. 305, 315—	
Sec. 26, Title II (U. S. C., Title 27, sec. 40)	11

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 734

UNITED STATES OF AMERICA

v.

COMMERCIAL CREDIT COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court's opinion in one of the three cases here involved (R. 47–50) is reported in 46 F. (2d) 171. No opinion was filed by the District Court in the other two cases. The opinion of the Circuit Court of Appeals in a consolidated appeal involving all three cases (R. 73–75) is reported in 53 F. (2d) 977.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 2, 1931. (R. 76.) The pe-

tition for certiorari was filed February 26, 1932, and was granted March 21, 1932. Jurisdiction to issue the writ is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 26, Title II, of the National Prohibition Act provides the exclusive method for the forfeiture of a vehicle seized by customs officers while being used illegally in concealing and transporting intoxicating liquor imported in violation of Sections 3061 and 3062 of the Revised Statutes.

STATUTES INVOLVED

Sections 3061 and 3062 of the Revised Statutes and Section 26, Title II, of the National Prohibition Act, are set forth in the Appendix, pp. 10–13, *infra*. Other relevant statutes are set forth in the appendix to the brief for the United States in *General Motors Acceptance Corporation* v. *United States*, No. 574, present term, which case is being argued immediately prior to the instant case.

STATEMENT

Three vehicles, two De Soto Coupes and one Farge Truck, were separately libelled by the United States in the District Court for the Southern District of Texas for alleged violation of Sections 3061–3062 of the Revised Statutes. The libels were similar in character, and in each it was charged that the vehicle was seized while being used in conceal-

ing and transporting intoxicating liquors which had lately theretofore been unlawfully imported into the United States. (R. 6, 35, 56.)

In each case the respondent intervened as a claimant setting up a lien interest in the seized property. Its answers in all three cases were substantially identical. (R. 7, 36, 58.) In each it pleaded the bona fide character of its lien, made a formal denial of the offense as charged, and then, by way of stating grounds for the dismissal of the libel, averred that the attached vehicle was seized in the act of illegally transporting intoxicating liquor in violation of the National Prohibition Act, and that the Government's exclusive right of forfeiture against the vehicle was that defined in Section 26 of that Act.

Jury trials were duly waived in writing (R. 18, 46, 69) and the facts were found by the court. (R. 13, 41, 63.) The court found in each case that the vehicle had been seized while transporting intoxicating liquor which had been illegally imported into the United States. It also found as a fact that the liens of the respondent were obtained in good faith, but it rejected the respondent's contention that the Government's exclusive remedy was that given by Section 26, Title II, of the National Prohibition Act, and entered judgments forfeiting the three cars. (R. 18, 50, 69.)

The respondent's appeals in the three cases were consolidated in the Circuit Court of Appeals pursuant to stipulation, and the cases docketed and

considered as a single case. (R. 21–22.) That court held that the Government's exclusive right of action against the cars was that declared in Section 26, Title II, of the National Prohibition Act, and reversed the judgments of the District Court and remanded the cases with directions to dismiss the libels without prejudice. (R. 76.)

SPECIFICATION OF ERROR

The Circuit Court of Appeals erred in reversing the judgments of the District Court and in holding that Section 26, Title II, of the National Prohibition Act provides the exclusive remedy for the forfeiture of a vehicle which is seized by customs officers while being used for the concealment and transportation of intoxicating liquors illegally imported in violation of Sections 3061 and 3062 of the Revised Statutes.

ARGUMENT

This case has been set for argument following *General Motors Acceptance Corporation* v. *United States,* No. 574, present term, wherein the principal question involved is substantially the same as that here presented. The argument of the Government in that case is applicable to this case and accordingly we will not repeat it here, but respectfully refer the Court to Points I and II of the brief for the United States in No. 574.

There are certain differences of fact between the instant case and the *General Motors Acceptance Corporation* case, but we submit that these differences do not change the applicable legal principles.

In No. 574 all the vehicles involved were seized by customs officers at regular customs inspection stations shortly after they had been observed crossing the border with the intoxicating liquor which they were found to contain. It is clear that the vehicles had been used shortly before they were seized in the unlawful importation of liquor.

In the instant case the vehicles were seized by customs officials while in the act of transporting and concealing intoxicating liquor which had been smuggled illegally into the United States, but it does not appear that the seized vehicles were used by the drivers in the actual importation of liquor into the United States. Moreover, in the instant case the vehicles were seized at considerable distances from the international boundary line, while in No. 574 the vehicles involved were seized near the border at regular customs stopping places.[1]

---

[1] The facts concerning the seizures of the three vehicles involved in the instant case are as follows:

First Case: United States of America v. *One De Soto Coupe.*

This vehicle was seized by a United States custom officer and other officers about midnight on October 29, 1930, in Brooks County, Texas, while being driven by its owner, one Lewis, and while laden with a large quantity of illegally imported liquors. (R. 13, 14.) When halted it was travelling away from the border. So far as can be determined from the record, the place of seizure was 70 or 80 miles from the international boundary. (R. 15.) Upon his arrest Lewis, the driver, stated that he had bought the liquor in Mexico, and that he had arranged to have it delivered to the American

The facts in each of the three cases here involved clearly establish an offense under Sections 3061 and 3062 of the Revised Statutes, which declare that vehicles used in conveying merchandise which has been illegally imported shall be forfeited. Those sections are not limited in any way by geographical considerations. Nor are they limited in application solely to vehicles which have participated directly in the act of illegal importation; they clearly

---

side of the Rio Grande River and there loaded into his car. (R. 14.) The liquor thus obtained was in the car when it was stopped and seized by the Federal officers. (R. 15.)

Second Case: United States of America v. *One Fargo Truck, etc.*

The Fargo Truck was captured by customs officers early on the morning of March 20, 1930, in Webb County, Texas, while being driven by one Brazil. (R. 42.) It was travelling at the time on a highway known as the Mines Road, which was commonly used by liquor runners, and it contained a large cargo of illegally imported liquor. The point where the truck was seized was about one mile from the Rio Grande River and about 22 miles from the town of Laredo, Texas. (R. 42, 43.)

Third Case: United States of America v. *One De Soto Coupe.*

This vehicle was captured about midnight on September 17, 1930, by customs officers, in Brooks County, Texas, at a point 70 or 80 miles from the Mexican border. (R. 64, 65.) When seized it was laden with a large quantity of alcohol, whiskey, and beer, and was being driven by one Young, its owner. Young told the seizing officers that he had gone into Mexico to purchase liquor, that he had left his automobile in a garage in Texas, and that the liquor which he had purchased in Mexico had been brought across the border by Mexican smugglers and loaded into his car on the Texas side. This was the cargo which the seized vehicle contained. (R. 65.)

apply not only to vehicles which are used as agencies for illegal importation, but also to those which may not have imported but which conceal and convey illegally imported goods after importation.[2] *United States v. Cahill*, 13 F. (2d) 83, 85 (C. C. A. 1st).

Moreover, it seems clear that the provisions of Sections 3061–3062 for searches and seizures anywhere in the United States of vehicles suspected of containing illegally imported merchandise are germane to the purpose of the customs laws—a purpose to control effectively the introduction of foreign merchandise into the commerce of the United States. It is too much to expect Federal officers to stop all illegal enterprises of smuggling character immediately at the border. Congress, therefore, did not leave the customs laws inoperative or impotent in cases where there was a successful evasion of customs supervision at that point.

We contend further that the degree of culpability of the offending vehicle is not lessened by the fact that it did not bring into the United States the illegally imported merchandise which it was

[2] Light is thrown upon the purpose and effect of Sections 3061 and 3062 of the Revised Statutes by comparing them with their related criminal section, Section 593 (b) of the Tariff Acts of 1922 and 1930, respectively (formerly R. S. 3082). As was pointed out in our brief in No. 574, these statutes comprehend the same acts. In one instance, consequences *in rem* are imposed; in the other, consequences *in personam*. The statutory provisions are alike in comprehending more than the mere act of importation. They make it an offense, civil and criminal, not only to import forbidden merchandise but also to convey and trade in such merchandise after its illegal entry.

found to be concealing or conveying. This is particularly apparent under the facts of the first and third cases (See footnote 1, p. 5, 6, *supra*), in which apparently the vehicles did not actually take part in the act of importation because of the practical obstacle presented by the Rio Grande River.

The seizures of the three vehicles here involved by the customs officers were acts which were a proper and integral part of the extensive administrative functions performed by the Federal customs service since the beginning of the Federal Government. The officers were primarily concerned with enforcing the customs laws. The fact that the illegally imported merchandise happened to be intoxicating liquor was merely accidental. The vehicles would have been been equally subject to forfeiture under Sections 3061–3062 had they contained any other kind of merchandise which had been illegally imported.

The situation here is unlike that presented in the *Richbourg* case where the Government was attempting to supplement the enforcement of the liquor transportation provisions of the National Prohibition Act by using an earlier and more rigorous statute which was never intended for such a purpose. The internal revenue statute there involved was enacted for the exclusive purpose of enforcing the collection of a tax on *domestic* liquor. In the instant case no subterfuge can be asserted; the Government is invoking a statute for the precise purpose for which the statute was intended. Section 26 of the National Prohibition Act

can be given full and complete effect without permitting it to supersede another equally mandatory and important statute which occupies a field distinctly its own.

A situation similar to that here involved was before this Court in *Callahan* v. *United States*, No. 576, decided April 11, 1932, in which case it was held that a person may be prosecuted under Section 593 (b) of the Tariff Act of 1922 for unlawfully importing intoxicating liquor notwithstanding that such act constituted an offense under the National Prohibition Act and was made punishable thereby.

CONCLUSION

We see no valid ground for distinguishing between the vehicles involved in the instant cases and those involved in No. 574. Accordingly, we submit that the Circuit Court of Appeals erred in reversing the decrees of forfeiture entered against the several automobiles in the District Court, and that the judgment of the Circuit Court of Appeals should be reversed.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
G. A. YOUNGQUIST,
Assistant Attorney General.
ARTHUR W. HENDERSON,
Special Assistant to the Attorney General.
PAUL D. MILLER,
CARROLL P. LYNCH,
Attorneys.

APRIL, 1932.

APPENDIX

Sections 3061 and 3062 of the Revised Statutes (U. S. C., Title 19, Secs. 482 and 483)—

SEC. 3061. Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial.

SEC. 3062. Every such vehicle and beast, or either, together with teams or other mo-

tive-power used in conveying, drawing, or propelling such vehicle or merchandise, and all other appurtenances, including trunks, envelopes, covers, and all means of concealment, and all the equipage, trappings, and other appurtenances of such beast, team, or vehicle, shall be subject to seizure and forfeiture. If any person who may be driving or conducting, or in charge of any such carriage or vehicle or beast, or any person traveling, shall willfully refuse to stop and allow search and examination to be made as herein provided, when required so to do by any authorized person, he shall be punishable by a fine of not more than one thousand dollars, nor less than fifty dollars.

Section 26, Title II, of the National Prohibition Act (Act of October 28, 1919, c. 85, Sec. 26, 41 Stat. 305, 315; U. S. C., Title 27, Sec. 40)—

When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the

person arrested under the provisions of this title in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a de-

scription thereof, shall be advertised in some newspaper published in the city or county where taken or if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold and the proceeds after deducting the expenses and costs shall be paid into the Treasury of the United States as miscellaneous receipts.

U. S. GOVERNMENT PRINTING OFFICE: 1922